

OFFICE OF THE
FEDERAL DEFENDER

JAMES BUSTAMANTE, CA SBN 133675
809 Montgomery, 2nd Floor
San Francisco CA 94133
Telephone 415/394-3800
Facsimile 415/394-3806

Attorney for Defendant
RODNEY ASUEGA

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

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UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

UNITED STATES OF AMERICA,

No. CR 02-00098 HG

Plaintiff,

DECLARATION OF COUNSEL IN
SUPPORT OF MOTION TO
CONTINUE MOTIONS, PRETRIAL
CONFERENCE AND TRIAL DATES

v.

RODNEY ASUEGA,

Defendant.

/

In support of defendant Rodney Asuega's motion to continue, I, JAMES BUSTAMANTE, declare as follows:

I am an attorney licensed to practice in the State of California, and I am the attorney of record for defendant Rodney Asuega in this case.

Defendant respectfully requests a continuance of the pretrial motions, pretrial conference and trial dates for the reasons set forth herein, as well as, based on the files and records in this case.¹

¹

Incorporated in full by reference herein are the files and records in this case, including, but not limited to, defendant's

Defendant's motions were to be filed on October 24, 2006, the Government's responses on November 7, 2006, a pretrial conference is set before the Honorable Magistrate Judge Chang on November 6, 2006, and final pretrial conference is presently set before the Honorable U.S. District Court Judge Gillmor on November 22, 2006 and trial on December 5, 2006. Rodney respectfully asks that the dates be continued for about six months, with a trial date to be set in June of 2007. The Government has no objection to this requested continuance.

This is the fourth request for a continuance due to Rodney's medical condition. As described below, his serious medical condition remains ongoing and has worsened, necessitating a further continuance in this case.

As the Court is aware, Rodney was diagnosed with Stage III colorectal cancer in late 2004. He has undergone multiple series of radiation and chemotherapy, as well as surgeries. Unfortunately the cancer has developed to Stage IV and Rodney's health has severely deteriorated.

previously filed motions to continue, supporting declarations and exhibits. See motion to continue and supporting declaration, docket numbers 33 and 34, filed September 8, 2005; declaration of counsel in support of stipulation to continue pretrial conference and trial dates, docket number 41, filed January 13, 2006; stipulation to continue trial date and excluding time under speedy trial act; order, docket number 48, filed May 16, 2006; declaration of counsel in support of stipulation to continue pretrial conference and trial dates, docket number 50, filed August 17, 2006.

The following information is based on a review of medical records; my associate Alexandra Rahn's telephone conversation with surgeon, Gregory A. Chambers, M.D.; the attached exhibits, including discharge records from LA County Hospital, U.S.C. Medical Center, for discharge date of September 28, 2006 (See attached Exhibit A) and for discharge date of October 31, 2006 (See attached Exhibit B); my conversation with Dr. Ault on November 1, 2006; as well as numerous telephone conversations and correspondence with Rodney's fiancé and surety Faustine Filimona. Counsel has requested a signed letter from Rodney's surgeon Dr. Ault. Dr. Ault advised that he hopes to be able to furnish this letter by Friday, November 3, 2006. Upon receipt of this letter, counsel hereby agrees to file it with the Court.

On August 1, 2006, Rodney was taken to the emergency room at California Hospital Medical Center, located in Los Angeles, California. After an evaluation, it was determined that Rodney was suffering from acute renal failure and perforated viscus. He was admitted to the ICU, where he received infections disease and surgery consultation. After discussions with his family, it was decided that he undergo emergency surgery on August 1 to repair small bowel perforation and to attempt to remove perforated viscus. Subsequent to the surgery, Rodney was placed on life support. Doctors prepared his family that he

might not survive. The life support was subsequently removed and Rodney's condition stabilized.

The day he was discharged from California Hospital Medical Center, Rodney was admitted to LA County Hospital, U.S.C. Medical Center, on or about September 6, 2006, from which he was discharged on September 28, 2006. (See Exhibit A.) Pursuant to this discharge record his prognosis was "poor". (See Exhibit A at p. 2, section H.) Also this discharge record indicates that the cancer has metastasized to his "lung and liver". (See Exhibit A at p.2, section B.)

Rodney was again admitted as an in-patient at LA County Hospital, U.S.C. Medical Center, on October 18, 2006, due to suffering from a systemic staph infection, infecting his blood and urine, as well as, for pain management and to attempt to build up strength. He was discharged on October 31, 2006. (See Exhibit B.) As with the prior discharge record, pursuant to this discharge record his prognosis was "poor". (See Exhibit B.) Rodney continues to suffer from the staff infection, which is attempting to be controlled through oral antibiotics.

While in the hospital, on or about October 25, 2006, Rodney met with an Oncology team to discuss further potential chemotherapy treatment. Prior to administering another round of chemotherapy, the doctors advised that his staff infection must first be controlled. Also, it is unclear how well Rodney will be

able to tolerate another round of chemotherapy, given his very weak condition and prior problems with responding to various regiments of chemotherapy. Prior to his last hospitalization, Rodney was so weak that he needed to use a wheelchair for any distances greater than about 25 feet. Rodney's next appointment with Oncologists, Dr. Ho and/or Dr. Chang, is now scheduled for November 7, 2006.

It is yet to be determined if further surgeries will be performed and if Rodney will be able to sustain further chemotherapy. Dr. Ault advised counsel that Rodney presently has a "huge" growing tumor. Various chemotherapy regimens have previously been non-responsive in shrinking this tumor. As Dr. Ault advised, further chemotherapy cannot be started until the staph infection is hopefully controlled through use of antibiotics. Dr. Ault stated that unless the size can be reduced through chemotherapy, a surgery to remove it will not be able to be performed. Unfortunately, according to Dr. Ault, Rodney's current prognosis is "grim".

Rodney's current medications include, but are not limited to, Oxycontin, Potassium, Ritalin, Nystatin, Aranest, Antibiotics, Hydromorphone (liquid morphine), Prevasid and Zoloft. Current symptoms include, severely decreased mobility, extreme weight loss (currently weighs about 130 pounds and is 6'1"), severe pain, bone aches, depression, loss of appetite, inability to sleep, numbness in fingers and toes, and anemia.

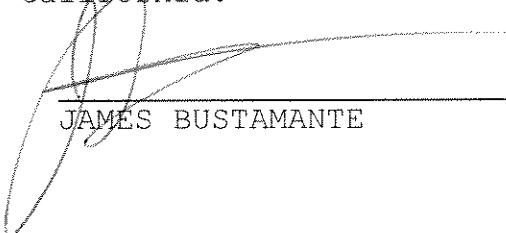
Therefore, based on the above, Rodney is not in the condition to travel and undergo trial without seriously compromising his health and treatment of his cancer. He will hopefully gain enough strength and his staff infection be controlled so as to undergoing another round of chemotherapy. However, if he does not, there has been discussion of hospice care. Following, chemotherapy his surgeon Dr. Ault will determine what further surgery will be needed. Based on the above, it is respectfully requested that trial in this matter be continued until June of 2007.

Time is excludable in computing the time within which the trial of the above criminal prosecution must commence for purposes of the Speedy Trial Act, in order to provide counsel for defendant with the reasonable time necessary for effective preparation, pursuant to Title 18 U.S.C. § 3161(h)(8)(B)(iv); and due to the physical incapacity of the defendant, pursuant to § 3161 (h)(1)(A). (For further authorities, see Declaration of Counsel in Support of Pretrial Motions and Trial Dates by defendant Rodney Asuega, filed on or about September 8, 2005, document number 34.)

Based on the above, the attached exhibits, and the files and records in this case, defendant Rodney Asuega respectfully requests that this Court grant the requested continuance and find that the ends of justice served by such a continuance outweigh the best interest of the public and the

defendant in a speedy trial, excluding time under the Speedy Trial Act.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is executed on November 1, 2006, at San Francisco, California.



JAMES BUSTAMANTE